

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

Louise M. Beighle,)	
)	DOCKET NO.: PT-1997-7
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal came on regularly for hearing on the 4th day of November, 1998, in the City of Polson, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law. The taxpayer, represented by Donald J. Beighle, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Appraisal Supervisor Jackie Ladner, and appraisers Kim Young and Debra Gafford, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Improvements only located on a portion
of Government Lot 2, Tract A, COS #3764,
S19 T23N R19W, Lake County, Montana.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$125,330.

4. The taxpayer appealed to the Lake County Tax Appeal Board requesting a reduction in value to \$91,700.

5. The County Board denied the appeal.

6. The taxpayer then appealed that decision to this Board.

TAXPAYER'S CONTENTIONS

Mr. Beighle testified as to the location of the property and the use of the land associated with the subject property as a cherry orchard. The taxpayer is of the opinion that the 1997 assessment (Ex 1), wherein it indicates the value before reappraisal (VBR) is \$103,750, is a substantial difference from the 1996 value for tax purposes of \$45,810 (Ex 4), and is in error. The taxpayer placed an addition completed

in 1996 onto this property. In the calculations of the difference between the 1997 VBR and the actual 1996 appraised value, it was believed that it should represent the actual difference between what was there in 1996 and what was added and appraised for 1997. The appeal is based on the fact that the difference is exaggerated, in the opinion of the taxpayer, because the addition did not cost that much.

Exhibit 5 is a presentation of the work done and the actual amount of cost incurred to improve the property. The taxpayer has calculated those costs at \$43,962.50 for the addition. Mr. Beighle testified that approximately one-half of the first floor square footage belongs to the addition. All of the second floor belongs to the prior structure since that was not modified at all. Everything else belongs to the existing structure value since there were no other changes made except for painting.

Mr. Beighle then calculated that 46% of the new value is the result of the addition, and 54% of the value is attributable to the existing structure.(Ex. 6) He then applied these percentages to the DOR value determinations for the 1997 VBR, and the resultant values are in excess of either the prior 1996 appraised value or the value that the taxpayer believes the VBR to be which includes the addition. The taxpayer did not bring the appeal to question the overall reappraised value

for the current appraisal cycle. The appeal is based on the fact that the amount added to the 1996 value to represent the value before reappraisal is far in excess of what was actually done. Mr. Beighle commented on the DOR exhibit presented to him at the local board hearing, concerning the various options the DOR believed to be open to it when handling property of this type: that is, where there has been new construction between the 1996 base year value and the 1997 base year for reappraisal. Mr. Beighle stated he believed his method to be equally valid.

Mr. Beighle stated that the total investment in the addition is \$45,500. When asked his opinion on property appreciation in Lake County, Mr. Beighle responded that he believed that some property may have appreciated. The contractor who did the work on the addition did so based on construction plans and on a competitive bid basis. The Beighles' did purchase materials on their own accounts with suppliers, but the numbers presented on his exhibits include labor and materials. The contractor was paid \$43,962.50 and the carpeting and paint was added to bring the total to \$45,500.

DOR'S CONTENTIONS

The DOR argued that the taxpayer has never questioned the overall indication of the 1997 reappraisal value but,

instead, has appealed the "phase-in" value of \$103,750 on the home. The DOR presented Exhibit A to show the location of the property. The property record card, detailing specifics about the property, was also submitted by the DOR.(Ex B)

The subject property was originally quality graded by the DOR as a Grade 4 (below average) with a half story. When the property was visited for the 1997 reappraisal, the property was regraded to a quality Grade 5 (average). Mr. Young stated that he was the appraiser to visit the property after the taxpayer filed the form AB-26 for appraisal review. He testified that he saw no reason to change anything that the appraiser who had appraised the property for reappraisal had done. He added that, if he had done the quality grading, he would probably have assigned a "plus" to the quality grade 5 designation.

Mr. Young stated that he believes the \$45,500 the taxpayer presented as being the cost incurred for the addition "seems like a logical amount that he would have paid for the addition." He added that the taxpayer is not taking into account the appreciation from 1992 for the change in the quality for the overall structure or the effective age of the doubling in size of the structure.

Ms. Ladner testified as to how the VBR was calculated. Lake County, Neighborhood 300, in which the

subject property is located was determined to have had a 120.8% increase from 1-1-92 to 1-1-96. The DOR determined the neighborhood percentage by studying the values from 1992 and comparing the values determined for reappraisal and used the percentage to create a VBR for this property. She explained that the DOR did not have the construction cost tables for 1992 or the models used for 1992 remaining in their computers to accomplish a VBR based on that data. The use of the neighborhood percentage change was viewed as the only way the DOR could arrive at a accurate estimate of value of the modified property to have a value from which the phase-in provisions of SB 195 could be calculated. The method used was adopted in the Administrative Rules of Montana (ARM).

Ms. Ladner testified that the total market value of this property now is not the sum of the old value plus the construction costs. The market value of the property as a whole has been increased by the addition.

The quality grade adjustment is proper, according to Mr. Young, because the structure that has been doubled in size is also a more complicated structure than existed before.

BOARD'S DISCUSSION

The taxpayer stated that the overall value of the subject home was not the matter in this appeal. The appeal is directed at the determination of value for a property

containing new construction that occurred during 1996. The Board is faced with an issue of a formula that has been adopted by Administrative Rule and is a function of the "phase-in" provisions of legislation known as SB-195. The taxpayer understood that it would not have been "fair" not to go through some process to bring this property up to a current value in order to have a more current value than the previous appraised value of \$45,810. His understanding of the process, however, is that the value of the new construction would be added to the prior value to update the value for the "phase-in" of value for 1997.

What has been accomplished instead is that the property was regraded for its quality of construction to a year that was, in fact, a year included for assessment purposes in the previous appraisal cycle. Had the new construction been completed in 1995 the value for 1996 would have been calculated using cost data from the previous appraisal cycle based on that cycle base year of 1992. The testimony of the DOR is that, because the reappraisal cycle for 1997 was ready to implement, that data was no longer available to them for use in establishing a 1996 value for the modified structure. Those characteristics of quality grade, size, and effective age that were cited by the DOR appraiser would still have been there, but the values would have been driven by the no longer existing

cost data. Instead, the VBR needed to be determined by the DOR following the procedure outlined in ARM 42.20.502. This Board may not amend or repeal any administrative rule of the department and must give the rule full effect unless the Board finds a rule arbitrary, capricious, or otherwise unlawful.

It is the opinion of this Board that the taxpayer failed to present sufficient evidence or testimony to meet the burden of proof required to sustain a conclusion that the determination of the VBR is in error. The appeal is, therefore, denied and the decision of the Lake County tax appeal board is affirmed.

The taxpayer is aware that the provisions of SB 195 is now before the Montana Supreme Court as DOR v. Theodore Roosevelt, IV, and the issue of the creation of the VBR in accordance with that legislation will depend on the decision in that case.

CONCLUSIONS OF LAW

1. 15-8-111, MCA. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

2. 15-2-301(4), MCA. In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedures Act, this section supersedes that act. The state

tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.

3. 42.20.502(4), ARM. For class 4 property (excluding industrial property) that contains new construction, the current year VBR is determined by dividing the reappraisal value by 1 plus the percent of neighborhood group change. The following formula illustrates that calculation:

$$\text{VBR} = \text{Reappraisal value} / (1 + \text{NBHD group percentage})$$

4. 42.20.504(1)(a), ARM. The following criteria will be used to identify new construction and destruction:

(a) All residential or commercial structures, outbuildings, and mobile homes that were built, remodeled, or destroyed in the preceding year;

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lake County by the assessor of that county at the 1997 tax year value of \$125,330 for the subject improvements and the Value Before Reappraisal of \$103,750 as determined by the Department of Revenue.

Dated this 16th of December, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.